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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA  
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12                  CHRIS ADAMSON, et al.,  
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14                  Plaintiffs,  
15                  v.  
16                  PIERCE COUNTY, et al.,  
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18                  Defendants.

19                  CASE NO. 3:21-cv-05592-DGE  
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21                  ORDER ON DEFENDANTS'  
22                  MOTION FOR A PROTECTIVE  
23                  ORDER AND PLAINTIFFS'  
24                  MOTION TO COMPEL  
DISCOVERY

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26                  This matter came before the Court on the parties' discovery motions. (Dkt. Nos. 12, 19.)

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28                  Defendants sought a protective order to stay discovery until the issues of immunity were  
29                  resolved. (Dkt. No. 12.) Plaintiffs moved to compel Defendants to respond to discovery  
30                  requests (Dkt. No. 19), arguing that Defendants' pending motions to dismiss and stay discovery  
31                  did not justify their failure to respond. The pending motion to dismiss that was the subject of  
32                  Defendants' motion for a protective order has now been decided. (Dkt. No. 24.) The Court  
33                  granted in part and denied in part Defendants' motion to dismiss; thus, Plaintiffs must revise  
34                  their written discovery requests accordingly. As a result, both Defendants' motion for a  
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1 protective order and Plaintiffs' motion to compel are now moot. Accordingly, the Court denies  
 2 both motions.

3 In its response, Plaintiffs sought an award of \$2,500 in attorneys' fees and costs and  
 4 argued that Defendants' request for a stay was made in bad faith. (Dkt. No. 15 at 8.) Parties  
 5 may seek an award of expenses based on a favorable ruling on a protective order. Fed. R. Civ. P.  
 6 26(c)(3); Fed. R. Civ. P. 37(a)(5). The court must not award expenses if, although denied, "the  
 7 motion was substantially justified." Fed. R. Civ. P. 37(a)(5)(B).

8 In this case, Defendants' motion was substantially justified given the case law supporting  
 9 a stay of discovery until after immunity has been determined.<sup>1</sup> See *Mitchell v. Forsyth*, 472 U.S.  
 10 511, 526 (1985) ("Unless the plaintiff's allegations state a claim of a violation of clearly  
 11 established law, a defendant pleading qualified immunity is entitled to dismissal before the  
 12 commencement of discovery"); see also *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir.  
 13 1988) ("The trial court did not abuse its discretion by staying discovery until the immunity issue  
 14 was decided"). Therefore, Plaintiffs are not entitled to attorneys' fees.

15 Further, in their motion to compel, Plaintiffs move for sanctions for Defendants' failure  
 16 to respond to their written discovery requests. (Dkt. No. 19 at 5.) The Court may order  
 17 sanctions for a party's failure to answer interrogatories "unless the failure was substantially  
 18 justified or other circumstances made an award of expenses unjust." Fed. R. Civ. Pro. 37(d)(3).

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21 <sup>1</sup> In arguing against a stay of discovery, Plaintiffs cite *Ames v. Lindquist*, 769 Fed. Appx. 502  
 22 (2019). (Dkt. No. 15 at 5) ("[Defendants] disregard[] what the 9<sup>th</sup> Circuit previously held from  
 23 [Ames], wherein the court ruled the defending prosecutors and Pierce County had no legal claim  
 24 to immunity that would bar discovery grounded in 'Brady' or any other authority."). (See also  
 Dkt. No. 23 at 2.) However, *Ames* does not stand for the proposition that Plaintiffs' claim.  
 Indeed, the *Ames* case does not involve prosecutors making *Brady* list determinations, and  
 therefore, is distinguishable from this case.

1 Because Defendants' motion for a protective order was substantially justified it would be unjust  
2 to levy sanctions against Defendants at this point.

3 Plaintiffs fail to establish that this delay in discovery has prejudiced their case. Plaintiffs  
4 claim that they could have used discovery material in responding to Defendants' motion to  
5 dismiss. (Dkt. No. 19 at 2.) However, Plaintiffs' argument is unavailing as they make no  
6 assertion that their Complaint allegations are or may be deficient or reliant on further discovery.  
7 See *Morales v. Fry*, 873 F.3d 817, 822 (9th Cir. 2017) ("Early determination is often possible  
8 'because qualified immunity most often turns on legal determinations, not disputed facts.'")  
9 (quoting *Slowman v. Tadlock*, 21 F.3d 1462, 1468 (9th Cir. 1994)).

10 Accordingly, and having considered Defendants' and Plaintiffs' motions, the briefing of  
11 the parties, and the remainder of the record, the Court finds and ORDERS that Defendants'  
12 motion for a protective order (Dkt. No. 12) and Plaintiffs' motion to compel (Dkt. No. 19) are  
13 DENIED as moot.

- 14 1. Plaintiffs must re-serve all outstanding discovery requests previously propounded on  
15 Defendants.  
16 2. Plaintiffs' requests for attorneys' fees and sanctions against Defendants are DENIED.

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18 Dated this 25th day of May 2022.

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David G. Estudillo  
United States District Judge